STATE OF MICHIGAN

COURT OF APPEALS

In re BARBIER/BEEBE, Minors.

UNPUBLISHED
December 8, 2015

No. 327433
Genesee Circuit Court
Family Division
LC No. 13-130076-NA

Before: MURRAY, P.J., and METER and RIORDAN, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating her parental rights to minor children TB and AB pursuant to MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g) and (j). We affirm.

Respondent first argues that the trial court clearly erred when it found clear and convincing evidence to support termination under each of the four cited statutory grounds. We disagree.

This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding is clearly erroneous if, even though there may be evidence to support it, this Court is left with a definite and firm conviction that a mistake occurred. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). For termination of parental rights, the trial court must find that at least one of the statutory grounds set forth in MCL 712A.19b has been met by clear and convincing evidence. *In re Terry*, 240 Mich App 14, 21-22; 610 NW2d 563 (2000).

A trial court may terminate a respondent's parental rights if it finds that a statutory ground has been established by clear and convincing evidence and termination is in the child's best interests. MCL 712A.19b(5). In relevant part, MCL 712A.19b(3) states:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
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> * * *
>
> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial

dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(*ii*) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The trial court did not clearly err when it found clear and convincing evidence to support termination of respondent's parental rights under MCL 712A.19b(3)(c)(*i*), which permits termination when (1) more than 182 days have passed since the original order of disposition, (2) the conditions leading to adjudication continue to exist, and (3) there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

The initial petition filed by the Department of Health and Human Services (DHHS) listed, among other things, inadequate housing, improper supervision, physical neglect, and truancy as conditions leading to the removal request. At the preliminary hearing and the adjudication, respondent did not contest removal, and at the adjudication she entered a no-contest plea to the allegation that she could not provide for the children or ensure their safety at the time. Respondent's court-ordered service plan required her to obtain and maintain adequate housing, which is obviously tied to the ability to provide for the children. To help her achieve this goal, respondent's DHHS case manager provided her with a referral to a service specifically providing housing assistance for qualifying individuals. Respondent failed to call the service and participate in an over-the-phone prescreening interview. Respondent also failed to maintain adequate housing on her own. At the termination hearing, almost two years after the children's removal, respondent still could not show that she had secured proper housing for her children. Indeed, she had provided nine different addresses and endured homelessness during the pendency of her case.

Respondent claimed to have obtained a stable home before the termination hearing and argued that if she were given an additional 60 days, she could prove to the trial court that she had obtained suitable housing. However, respondent was provided with more than a reasonable period to comply with the court's order to obtain housing and repeatedly failed. She was told at a family team meeting two weeks before the termination hearing that she would need to provide a lease for her home, but claimed at the termination hearing that she "forgot" to bring it. Respondent understood what she needed to do, was warned that she was on her last chance, and again failed to demonstrate a stable living environment. In light of respondent's transient history, it was not unreasonable for the trial judge to conclude that providing respondent with an additional 60 days would not result in her obtaining adequate housing. The finding that a ground for termination under MCL 712A.19b(3)(c)(*i*) had been established was not clearly erroneous.

MCL 712A.19b(3)(c)(*ii*) permits termination when (1) more than 182 days have passed since the original order of disposition, (2) "other conditions" exist that cause the child to come within the court's jurisdiction, (3) those other conditions have not been rectified after respondent had notice and was allowed an opportunity to rectify them, and (4) there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Respondent's service plan required her to complete substance-abuse counseling and pass random drug screens. She repeatedly failed to comply with this aspect of her plan, testing positive for cocaine and marijuana on 17 out of 30 random drugs screens throughout the course of the proceedings. The trial judge repeatedly told her that she needed to get her substance-abuse issue under control. At her fifth dispositional hearing, the trial judge went so far as to imply that substance abuse was respondent's biggest issue:

> [M]y biggest concern though, unfortunately is still the biggest concern, that hasn't changed. The drug use has to stop. The job, where you're living, stable housing, your income, all those things, I'm -- I'm very confident you can accomplish. What I wanted you to accomplish is -- in addition to that, is the stability with respect to being drug and alcohol free . . . .

Respondent expressed her understanding at that time. Yet she still delayed getting appropriate drug counseling and did not submit to a screen between the family team meeting and the termination hearing, even though she had been told she needed to do so.

The trial court clearly based its termination decision, in part, on respondent's failure to obtain control over her substance-abuse issue. Arguably, respondent's substance abuse issue was an "other condition" under subsection (c)(*ii*).[1] Based on her repeated failures, it was not clearly

[1] Even if it could be argued that the substance-abuse issue more properly fell under MCL 712A.19b(3)(c)(*i*), we emphasize that only one statutory ground need be established to terminate parental rights. *In re Trejo*, 462 Mich at 364-365.

erroneous for the trial court to conclude that there was no reasonable likelihood that respondent would be able to curb her substance abuse within a reasonable time given her children's ages.

The trial court did not clearly err when it found clear and convincing evidence to support termination of respondent's parental rights under MCL 712A.19b(3)(g), which permits termination if (1) the parent fails to provide proper care or custody for the child and (2) there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time given the child's age. *In re JK*, 468 Mich 202, 213-214; 661 NW2d 216 (2003). This Court has held that a parent's failure to comply the service plan is evidence of a parent's failure to provide proper care and custody for the child. *Id*. at 214. Additionally, minimal progress in services coupled with an inability to obtain and maintain suitable housing is alone sufficient to satisfy the statutory grounds under MCL 712A.19b(3)(g). *In re Trejo*, 462 Mich 341, 362-363; 612 NW2d 407 (2000), abrogated in part by statute on other grounds as stated in *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013).

The evidence applicable to MCL 712A.19b(3)(g) also applies to MCL 712A.19b(3)(j). Additionally, the evidence presented showed that respondent failed to address TB's nutritional needs as a borderline diabetic. Further, the substance-abuse issue was material to the issue of harm. This Court is not convinced that the trial court made a mistake in determining that termination was justified under MCL 712A.19b(3)(j).

Next, respondent argues that the trial court erred when it determined that termination of her parental rights was in the children's best interests. Again, we disagree. Whether termination of parental rights is in a child's best interests must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 90.

On appeal, respondent first argues that the trial court clearly erred in considering whether termination was in the best interests of the children because no statutory grounds had been shown by clear and convincing evidence. This argument is easily dispensed with. As discussed, the trial court found clear and convincing evidence to support statutory grounds for termination.

In considering whether termination of parental rights is in the best interests of the child, all available evidence on a wide variety of factors should be considered. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). These factors include the existence of a bond between the child and the parent, the parent's ability to parent, the child's need for permanency and stability, the advantages of a foster home over the parent's home, the parent's compliance with his or her service plan, the parent's visitation history with the child, the child's well-being, and the possibility of adoption. *Id*. at 713-714.

The evidence showed that respondent loved her children and her children loved her. Indeed, attending parenting time was one requirement of respondent's service plan that she substantially achieved. However, the evidence also showed that respondent failed to provide proper care and custody and to show that she was capable of parenting. Respondent lived at several different addresses, had been homeless, and failed to provide proof of stable housing even at the termination hearing. In addition, she continued to provide TB with unhealthy food after learning that he needed proper nutrition as a borderline diabetic. The trial judge also properly considered the positive changes in TB in foster care and also properly considered AB's

need for permanency and stability in light of her behavioral problems. Children should not have to wait indefinitely for parental reformation and rehabilitation that may never come to fruition. See, generally, *In re Dahms*, 187 Mich App 644, 647; 468 NW2d 315 (1991). The trial court did not err in finding that termination of respondent's parental rights was in the best interests of the children.

Finally, respondent argues that, in light of her learning disability, DHHS failed to provide her with reasonable services in accordance with the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*. We disagree.

This Court has explained that "the state legislative requirement that [DHHS] make reasonable efforts to reunite a family is consistent with the ADA's directive that disabilities be reasonably accommodated." *In re Terry*, 240 Mich App at 26. This Court held that the ADA requires DHHS "to make reasonable accommodations for those individuals with disabilities so that all persons may receive benefits of public programs and services. *Id*. at 25. "In other words, if [DHHS] fails to take into account the parents' limitations or disabilities and make any reasonable accommodations, then it cannot be found that reasonable efforts were made to reunite the family." *Id*. at 26.

Respondent's claim that DHHS failed to make reasonable efforts in light of her disability is unpersuasive. Appropriate services and help were provided, but respondent failed to either participate or demonstrate that she benefited from the services. At one point a caseworker provided books of available resources to respondent and offered to "go through" them with her, but respondent replied, "no, I got it." "The ADA does not require petitioner to provide respondent with full-time, live-in assistance . . . ." *In re Terry*, 240 Mich App at 27-28. While DHHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered. *In re Frey*, 297 Mich App at 248. We note that, with the services provided, respondent apparently obtained housing two weeks before the termination hearing and enrolled herself in a substance-abuse therapy program. Other than generally arguing that she should have been given more assistance, respondent fails to identify how additional accommodations would have helped her overcome her issues. The trial court did not err when it found that DHHS had made reasonable efforts toward reunification as required by state law and the ADA.

Affirmed.

/s/ Christopher M. Murray
/s/ Patrick M. Meter
/s/ Michael J. Riordan